

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 7/27/05 Item No.: [3a](#)

File Number
CPA 96-053-01

Application Type
Conditional Use Permit Amendment

Council District
2

Planning Area
Coyote

Assessor's Parcel Number(s)
Portion of 725-10-012

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Jeff Roche

Location: Easterly side of Monterey Highway, approximately 1,300 feet southerly of Richmond Avenue (9770 Monterey Highway)

Gross Acreage: 0.10

Net Acreage: 0.10

Net Density: N/A

Existing Zoning: R-1-5 Residence District

Existing Use: Monopole/Wireless Communications Facility

Proposed Zoning: No change

Proposed Use: Monopole/Wireless Communications Facility, modifications to the existing antennas, and the installation of (3) new antennas (co-location) and associated ground-mounted equipment.

GENERAL PLAN

Completed by: JR

Land Use/Transportation Diagram Designation
Public Park/Open Space with Coyote Valley Urban Reserve Overlay

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JR

North: Agriculture

County

East: Coyote Creek and Coyote Creek Park chain

R-1-5 Single-Family Residence

South: Agriculture

R-1-1 and R-1-5 Single-Family Residence

West: Agriculture, Residential, and Industrial

R-1-5 Single-Family Residence

ENVIRONMENTAL STATUS

Completed by: JR

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JR

Annexation Title: Riverside No. 1-B

Date: 02/05/1960

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions

Date: _____

Approved by: _____
☒ Action

OWNER

Kenneth and Anna Saso
9440 Monterey Road, Rt. 2, Box 560
Morgan Hill, CA 95037

APPLICANT/DEVELOPER

Metro PCS
Attn: Patrick Cruzen
Site Acquisition
15966 Cambrian Drive
San Leandro, CA 94578

PUBLIC AGENCY COMMENTS RECEIVED**Completed by: Jeff Roche**

Department of Public Works
No comments.

Other Departments and Agencies
See attached memoranda from Fire Department (dated, 3/30/05).

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The property owners, Kenneth and Anna Saso, on behalf of MetroPCS, are requesting a Conditional Use Permit Amendment to allow modifications to an existing 110-foot tall, wireless communication monopole, re-configuring the existing antennas, the addition of (3) new antennas (co-location) and associated ground-mounted equipment on a 0.10 gross acre site.

The Zoning Ordinance requires a Conditional Use Permit (CUP) for wireless communication facilities proposed in the R-1-5 Single-Family Residence District. This CUP also functions as a Site Development Permit for the installation of improvements, including the new wood fencing to replace the existing chain link.

Surrounding uses include agriculture to the north, Coyote Creek and the Coyote Creek Park chain to the east; agriculture to the south; and agriculture, industrial and residential uses to the west.

An industrial use and a total of (3) three, monopoles/wireless communications facilities are currently located on the subject site. The new ground-mounted equipment will be housed in the existing equipment enclosure. The proposed facility will be unmanned, except for monthly maintenance operations. As part of this Permit Amendment, the applicant has proposed to replace the existing chain link fencing with wood fencing, consistent with the "rural nature" of the area. The goal of this project is to continue to provide and enhance coverage along US Highway 101 and the Monterey Highway area.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

Permit History

The existing monopole/wireless communications facility was originally approved on December 19, 1984, through a Conditional Use Permit (File No. CP 84-075) and Development Variance (File No. V85-002) which specifically provided for the height of 110 feet.

The most recent permits issued on the “site” were approved by the Planning Commission on January 15, 1997. Neither the last Conditional Use Permit (File No. CP 96-053) nor Development Variance (File No. V96-008) included a time condition and therefore, they have not expired.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15303 which pertains to the new construction or conversion of small structures such as that which is proposed.

GENERAL PLAN CONFORMANCE

This site has a General Plan Land Use/Transportation Diagram designation of Public Park/Open Space with a Coyote Valley Urban Reserve Overlay. The General Plan Discretionary Alternate Use Policy allows new public/quasi public uses regardless of General Plan designation based on the need for the facility and its compatibility with surrounding uses. In light of the applicant’s stated need to provide phone coverage in this area of San Jose and the analysis below regarding consistency with the City Council Land Use Policy for Wireless Communication Antennas, staff has concluded that the proposed project is consistent with the General Plan based on this Discretionary Alternate Use Policy.

The Urban Design Policies in the General Plan state that where substantial height is intrinsic to the function of a structure and such structure is located so as to avoid significant adverse effects on adjacent properties, height limits may be established in the context of project review. The Plan further states that for communication structures located outside the Downtown Core Area and regulated by the Public Utilities Commission, the maximum height may be 100 feet on sites with non-residential or non-urban land use designations. In that the existing monopole was the subject of a prior Permit that does not have an expiration date and the applicant(s) have proposed to pull the existing antennas in close to the pole, further reducing visual impacts, staff has concluded that the monopole and collocation of new antennas is consistent with the policies of the Plan.

ANALYSIS

The primary issues analyzed for the project are: 1) conformance with *Council Policy 6-20, Land Use Policy for Wireless Communications Antennas* and 2) conformance with the Zoning Code.

Council Policy 6-20

The key aspects of the Policy relevant to this proposal include visual impacts and permit expirations.

Visual Impacts. The Council Policy specifies that prior to siting a new wireless communication monopole, an alternatives analysis should be prepared to identify alternatives that reduce visual impacts. No alternatives analysis was prepared for this proposal because this monopole is an existing facility. The Policy specifies that monopoles should be of stealth/slim pole design and that ancillary equipment should be appropriately screened and landscaped. The Policy encourages co-location to reduce the overall visual impact of the development of wireless antenna networks. The applicant(s) are proposing to co-locate/ mount the new antennas close to the pole below the existing antennas at the top of the pole and to replace the existing “wagon-wheel” array of 9 (nine) antennas at the top of the pole with 6 (six) antennas mounted/ pulled closer to the pole. The new antennas will be painted to match the existing pole. Staff has concluded that as proposed and conditioned, the project developer has designed a facility that will have less visual impact than the current facility and meets the intent of the Policy.

Permit Expirations. The Policy specifies that when a Permit expires and the applicant has failed to file for a timely renewal, the antenna facility should be removed from the site. Staff is proposing a condition that clarifies the applicant’s obligation to remove the facility from the site, should this Permit be allowed to expire or if the use were to cease operation. The Policy also discusses the need for time limit conditions in Use Permits to provide for future review of the subject antenna installation, relative to changing development patterns such as may be anticipated over time in Coyote Valley, and improved technologies. A condition is also included in the Permit to reflect the typical 5-year, review time period.

Based on this analysis, staff concludes that the proposed wireless facility is in substantial conformance with the requirements of Council Policy 6-20.

Conformance with the Zoning Code

The Zoning Code issues relevant to this proposal include height and setbacks.

The maximum height for a wireless communication monopole in any of the City’s Zoning Districts is 60 feet. A Development Variance was approved in 1984 to allow this monopole to be constructed. The applicant has not proposed to reduce the height of the monopole, and has indicated that lowering the pole would likely result in coverage problems. However, the project does include modifications to the existing antennas that will reduce the visual impacts of the existing monopole.

The proposed facility is consistent with the 20-foot rear and 5-foot side setbacks of the R-1-5 Residence District.

Conclusions

Based on the above analysis, staff concludes that the proposed facility is consistent with the General Plan, the *Council Land Use Policy for Wireless Communication Facilities* and the Zoning Code, and that the current proposal is an improvement over the wireless communication facility approved for this site in 1984. Although the additional antennas have the potential to increase the visual impacts of the monopole, the corresponding modifications to the existing antennas to be more of a stealth design, will improve the overall appearance of the facility.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit Amendment and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public Park/Open Space with a Coyote Valley Urban Reserve overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-5 Single-Family Residence Zoning District. The maximum height allowed under the Zoning Code is 35 feet. The existing antenna was the subject of a Development Variance issued in 1984 (File No. V 85-01-002), that allowed the height of the pole to be increased from 35 feet to 110 feet. That Permit is still valid.
3. The current monopole/wireless communications facility was approved under a prior Conditional Use Permit (CUP)(File No. CP 96-053). That CUP was approved on January 15, 1997, and did not include an expiration date. As conditioned, this Permit Amendment has an expiration date and would be valid for five (5) years from the date of issuance by the Planning Commission.
4. This site has a Land Use/Transportation Diagram designation of Public Park/Open Space with a Coyote Valley Urban Reserve Overlay. General Plan Discretionary Alternate Use Policy allows new public/quasi public uses, regardless of General Plan designation, on the need for the facility and its compatibility with surrounding uses. The proposed project is consistent with the General Plan based on this Discretionary Alternate Use Policy.
5. The Urban Design Policies in the General Plan, state that where substantial height is intrinsic to the function of a structure and such structure is located so as to avoid significant adverse effects on adjacent properties, height limits may be established in the context of project review. The Plan further states that for communication structures located outside the Downtown Core Area and regulated by the Public Utilities Commission, the maximum height may be 100 feet on sites with non-residential or non-urban land use designations. The existing monopole is 110 feet in height and was the subject of both a Conditional Use Permit and Development Variance that are still in effect. The applicant has proposed to “pull in” the existing antennas at the top of the pole and reduce their number from 9 to 6, resulting in a more stream-lined design. For those reasons, staff has concluded that the project is in conformance with the General Plan.
6. The existing facility is surrounded by agricultural uses to the north, Coyote Creek and the Coyote Creek Park chain to the east, agricultural uses to the south, and agricultural, residential and industrial to the west.
7. The proposed project would allow the continued use of an existing monopole/wireless communications facility, modification to the existing antennas, and the addition of new, co-located antennas and associated ground-mounted equipment on the subject site. The modifications to the antennas include replacement of existing antennas with new antennas that are more closely mounted to the existing pole.

8. This Permit would allow the modification of existing antennas on the monopole approved under File No. CP 96-053.
9. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.
5. Outdoor activities and facilities will be screened by fencing or other devices compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit Amendment to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be prior to issuance of a Building Permit. Submittal of the recording fee less than a week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **Acceptance of Permit.** Per Section 20.100.290(B) should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "SST South Coyote Colo. – 9760 Monterey Road" dated, March 2, 2005, last revised on June 6, 2005, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

3. **Lighting.** This Permit allows no new on-site lighting.
4. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set. No barbed, razor, or similar wire or electric fences may be installed as part of this Permit. The project developer shall replace the existing chain link fencing with new wood fencing as shown on the approved Conditional Use Permit Amendment plans.
5. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set. All new antennas shall be painted to match the existing pole, and ground-mounted equipment shall be painted to match the existing ground-level equipment.
6. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. This permit file number, CPA 96-053-01 shall be printed on all construction plans submitted to the Building Division.
7. **Fire Flow.** Required fire flow for the site is as approved in writing by the Fire Chief.
8. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
10. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
11. **Generators.** This Permit does not include the approval of any emergency back-up generators on the subject site.
12. **Co-location.** This proposal shall not preclude the co-location of other similar wireless antenna facilities.
13. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.
14. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San Jose Municipal Code requires that all land development approvals and applications for such approvals in the City of San Jose shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes

a determination that the cumulative sewage treatment demand of the San Jose-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San Jose-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

15. **Exterior Alterations.** No exterior alterations to the structure may be implemented unless and until this Conditional Use Permit Amendment is released to the Building Division.
16. **Modifications to the Existing Antennas.** This Permit Amendment authorizes the modifications to the existing Nextel antennas mounted on the top of the monopole.
17. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
18. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.
19. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CPA 96-053-01, shall be printed on all construction plans submitted to the Building Division.
 - b. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
20. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

21. **Notice to Applicant.** The property owner is hereby notified of the obligation to remove from the site all improvements authorized by this Permit if the Permit is allowed to expire.
22. **Time Limit.** This Conditional Use Permit Amendment expires and has no further force or effect five (5) years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this conditional use permit has been granted for a period of five (5) years only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit Amendment. The date of adoption is the date the Resolution granting this Conditional Use Permit Amendment is approved by the Planning Commission. The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

cc: Doug Kearney, Spectra Site, 2201 Dupont Drive, Suite 340, Irvine, CA 92612
 James Vaccaro / Jaspri Singh, MSA, 208 Utah Street, 4th Floor, San Francisco, CA 94013
 Patrick Cruzen, Metro PCS, 1080 Marina Village Parkway, 4th Floor, Alameda, CA 94501

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